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LAW/RWH

P.L.2011, CHAPTER 84, *approved June 30, 2011*

Senate, No. 2981

1 AN ACT decreasing the minimum corporation business tax on  
2 certain New Jersey subchapter S corporations, amending  
3 P.L.1945, c.162.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to  
9 read as follows:

10 5. The franchise tax to be annually assessed to and paid by  
11 each taxpayer shall be the greater of the amount computed pursuant  
12 to this section or the alternative minimum assessment computed  
13 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided  
14 however, that in the case of a taxpayer that is a New Jersey S  
15 corporation, an investment company, a professional corporation  
16 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a  
17 similar corporation for profit organized for the purpose of rendering  
18 professional services under the laws of another state, or a person  
19 operating on a cooperative basis under Part I of Subchapter T of the  
20 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,  
21 there shall be no alternative minimum assessment computed  
22 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

23 The amount computed pursuant to this section shall be the sum  
24 of the amount computed under subsection (a) hereof, or in the  
25 alternative to the amount computed under subsection (a) hereof, the  
26 amount computed under subsection (f) hereof, and the amount  
27 computed under subsection (c) hereof:

28 (a) That portion of its entire net worth as may be allocable to  
29 this State as provided in section 6, multiplied by the following  
30 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated  
31 net worth; 4/10 of a mill per dollar on the second \$100,000,000.00;  
32 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a  
33 mill per dollar on all amounts of allocated net worth in excess of  
34 \$300,000,000.00; provided, however, that with respect to reports  
35 covering accounting or privilege periods set forth below, the rate  
36 shall be that percentage of the rate set forth in this subsection for  
37 the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

44  
45 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

1 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3  
2 1/4% of its entire net income or such portion thereof as may be  
3 allocable to this State as provided in section 6 of P.L.1945, c.162  
4 (C.54:10A-6) plus such portion thereof as is specifically assigned to  
5 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-  
6 6.1); provided, however, that with respect to reports covering  
7 accounting or privilege periods or parts thereof ending after  
8 December 31, 1967, the rate shall be 4 1/4%; and that with respect  
9 to reports covering accounting or privilege periods or parts thereof  
10 ending after December 31, 1971, the rate shall be 5 1/2%; and that  
11 with respect to reports covering accounting or privilege periods or  
12 parts thereof ending after December 31, 1974, the rate shall be 7  
13 1/2%; and that with respect to reports covering privilege periods or  
14 parts thereof ending after December 31, 1979, the rate shall be 9%;  
15 provided however, that for a taxpayer that has entire net income of  
16 \$100,000 or less for a privilege period and is not a partnership the  
17 rate for that privilege period shall be 7 1/2% and provided further  
18 that for a taxpayer that has entire net income of \$50,000 or less for  
19 a privilege period and is not a partnership the rate for that privilege  
20 period shall be 6 1/2%.

21 (2) For a taxpayer that is a New Jersey S corporation:

22 (i) for privilege periods ending on or before June 30, 1998 the  
23 rate determined by subtracting the maximum tax bracket rate  
24 provided under N.J.S.54A:2-1 for the privilege period from the tax  
25 rate that would otherwise be applicable to the taxpayer's entire net  
26 income for the privilege period if the taxpayer were not an S  
27 corporation provided under paragraph (1) of this subsection for the  
28 privilege period; and

29 (ii) For a taxpayer that has entire net income in excess of  
30 \$100,000 for the privilege period, for privilege periods ending on or  
31 after July 1, 1998, but on or before June 30, 2001, the rate shall be  
32 2%,

33 for privilege periods ending on or after July 1, 2001, but on or  
34 before June 30, 2006, the rate shall be 1.33%,

35 for privilege periods ending on or after July 1, 2006, but on or  
36 before June 30, 2007, the rate shall be 0.67%, and

37 for privilege periods ending on or after July 1, 2007 there shall  
38 be no rate of tax imposed under this paragraph; and

39 (iii) For a taxpayer that has entire net income of \$100,000 or less  
40 for privilege periods ending on or after July 1, 1998, but on or  
41 before June 30, 2001 the rate for that privilege period shall be 0.5%,  
42 and for privilege periods ending on or after July 1, 2001 there shall  
43 be no rate of tax imposed under this paragraph.

44 (iv) The taxpayer's rate determined under subparagraph (i), (ii)  
45 or (iii) of this paragraph shall be multiplied by its entire net income  
46 that is not subject to federal income taxation or such portion thereof  
47 as may be allocable to this State pursuant to sections 6 through 10  
48 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such

1 portion thereof as is specifically assigned to this State as provided  
2 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

3 (3) For a taxpayer that is a New Jersey S corporation, in  
4 addition to the amount, if any, determined under paragraph (2) of  
5 this subsection, the tax rate that would otherwise be applicable to  
6 the taxpayer's entire net income for the privilege period if the  
7 taxpayer were not an S corporation provided under paragraph (1) of  
8 this subsection for the privilege period multiplied by its entire net  
9 income that is subject to federal income taxation or such portion  
10 thereof as may be allocable to this State pursuant to sections 6  
11 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

12 (d) Provided, however, that the franchise tax to be annually  
13 assessed to and paid by any investment company or real estate  
14 investment trust, which has elected to report as such and has filed  
15 its return in the form and within the time provided in this act and  
16 the rules and regulations promulgated in connection therewith,  
17 shall, in the case of an investment company, be measured by 40% of  
18 its entire net income and 40% of its entire net worth, and in the case  
19 of a real estate investment trust, by 4% of its entire net income and  
20 15% of its entire net worth, at the rates hereinbefore set forth for the  
21 computation of tax on net income and net worth, respectively, but in  
22 no case less than \$250, and further provided, however, that the  
23 franchise tax to be annually assessed to and paid by a regulated  
24 investment company which for a period covered by its report  
25 satisfies the requirements of Chapter 1, Subchapter M, Part I,  
26 Section 852(a) of the federal Internal Revenue Code shall be \$250.

27 (e) The tax assessed to any taxpayer pursuant to this section  
28 shall not be less than \$25 in the case of a domestic corporation, \$50  
29 in the case of a foreign corporation, or \$250 in the case of an  
30 investment company or regulated investment company. Provided  
31 however, that for privilege periods beginning in calendar year 1994  
32 and thereafter the minimum taxes for taxpayers other than an  
33 investment company or a regulated investment company shall be as  
34 provided in the following schedule:

35	Period Beginning	Domestic	Foreign
36	In Calendar Year	Corporation	Corporation
37		Minimum Tax	Minimum Tax
38	1994	\$ 50	\$100
39	1995	\$100	\$200
40	1996	\$150	\$200
41	1997	\$200	\$200
42	1998	\$200	\$200
43	1999	\$200	\$200
44	2000	\$200	\$200
45	2001	\$210	\$210

46 and for calendar years 2002 through 2005 the minimum tax for all  
47 taxpayers shall be \$500, and for calendar year 2006 [and  
48 thereafter] through calendar year 2011 the minimum tax for all

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1 corporations, and for privilege periods beginning in calendar year  
2 2012 and thereafter the minimum tax for corporations that are not  
3 New Jersey S corporations shall be based on the New Jersey gross  
4 receipts, as defined for the purposes of this section pursuant to  
5 section 7 of P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant  
6 to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	.....\$500
\$100,000 or more but	
less than \$250,000	..... \$750
\$250,000 or more but	
less than \$500,000	..... \$1,000
\$500,000 or more but	
less than \$1,000,000	..... \$1,500
\$1,000,000 or more	..... \$2,000

16 and for privilege periods beginning in calendar year 2012 and  
17 thereafter the minimum tax for corporations that are New Jersey S  
18 corporations shall be based on the New Jersey gross receipts, as  
19 defined for the purposes of this section pursuant to section 7 of  
20 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the  
21 following schedule:

<u>New Jersey Gross Receipts:</u>	<u>Minimum Tax:</u>
<u>Less than \$100,000</u>	<u>.....\$375</u>
<u>\$100,000 or more but</u>	
<u>less than \$250,000</u>	<u>..... \$562.50</u>
<u>\$250,000 or more but</u>	
<u>less than \$500,000</u>	<u>..... \$750</u>
<u>\$500,000 or more but</u>	
<u>less than \$1,000,000</u>	<u>..... \$1,125</u>
<u>\$1,000,000 or more</u>	<u>..... \$1,500</u>

31 provided however, that for a taxpayer that is a member of an  
32 affiliated group or a controlled group pursuant to section 1504 or  
33 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
34 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or  
35 more for the privilege period, the minimum tax shall be \$2,000 for  
36 the privilege period.

37 (f) In lieu of the portion of the tax based on net worth and to be  
38 computed under subsection (a) of this section, any taxpayer, the  
39 value of whose total assets everywhere, less reasonable reserves for  
40 depreciation, as of the close of the period covered by its report,  
41 amounts to less than \$150,000, may elect to pay the tax shown in a  
42 table which shall be promulgated by the director.

43 (g) Provided however, that for privilege periods beginning on or  
44 after January 1, 2001 but before January 1, 2002 the franchise tax  
45 annually assessed to and paid by a taxpayer:

46 (1) that is a limited liability company or foreign limited liability  
47 company classified as a partnership for federal income tax purposes

1 shall be the amount determined pursuant to the provisions of section  
2 3 of P.L.2001, c.136 (C.54:10A-15.6); or

3 (2) that is a limited partnership or foreign limited partnership  
4 classified as a partnership for federal income tax purposes shall be  
5 the amount determined pursuant to the provisions of section 4 of  
6 P.L.2001, c.136 (C.54:10A-15.7).

7 (h) Provided however, that for privilege periods beginning on or  
8 after January 1, 2002 the franchise tax annually assessed to and paid  
9 by a taxpayer that is a partnership shall be the amount determined  
10 pursuant to the provisions of section 12 of P.L.2002, c.40  
11 (C.54:10A-15.11).

12 (i) (Deleted by amendment, P.L.2008, c.120)  
13 (cf: P.L.2008, c.120, s.1)

14

15 2. This act shall take effect immediately.

16

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#### STATEMENT

19

20 This bill decreases the minimum corporation business tax on  
21 New Jersey subchapter S corporations. New Jersey subchapter S  
22 corporations are corporations, regardless of where they are  
23 organized or headquartered, that have made the federal subchapter S  
24 election to be exempt from taxation on their regular income and  
25 have made the New Jersey election to be exempt from corporation  
26 business tax on their regular income.

27 Currently, all corporations subject to corporation business tax,  
28 including New Jersey subchapter S corporations, are subject to  
29 minimum tax based on the New Jersey gross receipts of the  
30 taxpayer corporation as follows:

31 New Jersey Gross Receipts:	31 Minimum Tax:
32 Less than \$100,000	32 \$500
33 \$100,000 or more but	
34 less than \$250,000	34 \$750
35 \$250,000 or more but	
36 less than \$500,000	36 \$1,000
37 \$500,000 or more but	
38 less than \$1,000,000	38 \$1,500
39 \$1,000,000 or more	39 \$2,000

40 The minimum tax of corporations that are members of affiliated  
41 or controlled groups with total payrolls of \$5 million or more is  
42 \$2,000 annually.

43 This bill provides a 25% cut in the minimum tax payable by a  
44 New Jersey subchapter S corporation, for taxable periods beginning  
45 on or after January 1, 2012, as follows:

46 New Jersey Gross Receipts:	46 Minimum Tax:
47 Less than \$100,000	47 \$375
48 \$100,000 or more but	

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6

1	less than \$250,000	\$562.50
2	\$250,000 or more but	
3	less than \$500,000	\$750
4	\$500,000 or more but	
5	less than \$1,000,000	\$1,125
6	\$1,000,000 or more	\$1,500

7 The minimum tax of New Jersey subchapter S corporations that  
8 are members of affiliated or controlled groups with total payrolls of  
9 \$5 million or more will remain \$2,000 annually under the bill.

10

11

12

13

14 \_\_\_\_\_  
15 Decreases the minimum corporation business tax on certain New  
Jersey subchapter S corporations by 25%.



# SENATE, No. 2981

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 23, 2011

**Sponsored by:**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Senator PAUL A. SARLO**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Salem, Cumberland and Gloucester)**

**Co-Sponsored by:**

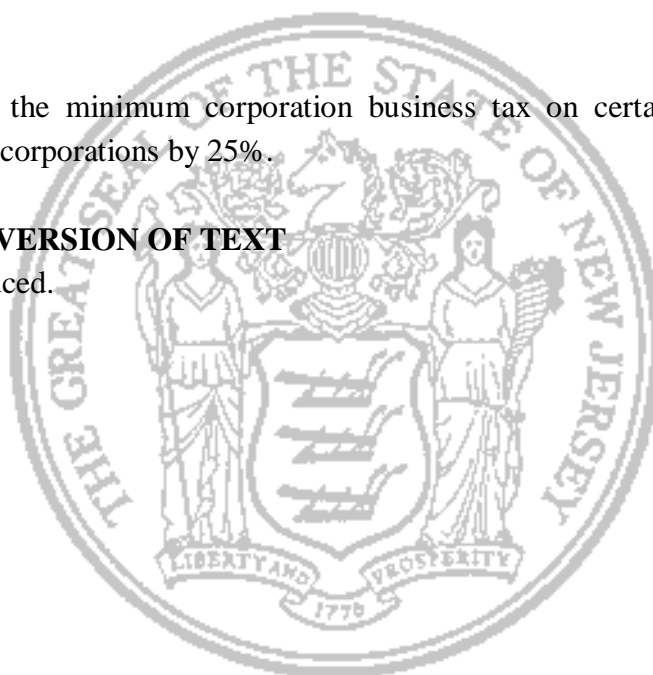
**Senators Addiego, Gordon, Oroho, Whelan, Stack, Assemblymen Chivukula, Wisniewski, Fuentes, Milam, Benson, Assemblywomen Pou and Evans**

**SYNOPSIS**

Decreases the minimum corporation business tax on certain New Jersey subchapter S corporations by 25%.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/30/2011)**

1 AN ACT decreasing the minimum corporation business tax on  
2 certain New Jersey subchapter S corporations, amending  
3 P.L.1945, c.162.

4  
5 BE IT ENACTED by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to  
9 read as follows:

10 5. The franchise tax to be annually assessed to and paid by  
11 each taxpayer shall be the greater of the amount computed pursuant  
12 to this section or the alternative minimum assessment computed  
13 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided  
14 however, that in the case of a taxpayer that is a New Jersey S  
15 corporation, an investment company, a professional corporation  
16 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a  
17 similar corporation for profit organized for the purpose of rendering  
18 professional services under the laws of another state, or a person  
19 operating on a cooperative basis under Part I of Subchapter T of the  
20 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,  
21 there shall be no alternative minimum assessment computed  
22 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

23 The amount computed pursuant to this section shall be the sum  
24 of the amount computed under subsection (a) hereof, or in the  
25 alternative to the amount computed under subsection (a) hereof, the  
26 amount computed under subsection (f) hereof, and the amount  
27 computed under subsection (c) hereof:

28 (a) That portion of its entire net worth as may be allocable to  
29 this State as provided in section 6, multiplied by the following  
30 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated  
31 net worth; 4/10 of a mill per dollar on the second \$100,000,000.00;  
32 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a  
33 mill per dollar on all amounts of allocated net worth in excess of  
34 \$300,000,000.00; provided, however, that with respect to reports  
35 covering accounting or privilege periods set forth below, the rate  
36 shall be that percentage of the rate set forth in this subsection for  
37 the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

45 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

46 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3  
47 1/4% of its entire net income or such portion thereof as may be  
48 allocable to this State as provided in section 6 of P.L.1945, c.162

1 (C.54:10A-6) plus such portion thereof as is specifically assigned to  
2 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-  
3 6.1); provided, however, that with respect to reports covering  
4 accounting or privilege periods or parts thereof ending after  
5 December 31, 1967, the rate shall be 4 1/4%; and that with respect  
6 to reports covering accounting or privilege periods or parts thereof  
7 ending after December 31, 1971, the rate shall be 5 1/2%; and that  
8 with respect to reports covering accounting or privilege periods or  
9 parts thereof ending after December 31, 1974, the rate shall be 7  
10 1/2%; and that with respect to reports covering privilege periods or  
11 parts thereof ending after December 31, 1979, the rate shall be 9%;  
12 provided however, that for a taxpayer that has entire net income of  
13 \$100,000 or less for a privilege period and is not a partnership the  
14 rate for that privilege period shall be 7 1/2% and provided further  
15 that for a taxpayer that has entire net income of \$50,000 or less for  
16 a privilege period and is not a partnership the rate for that privilege  
17 period shall be 6 1/2%.

18 (2) For a taxpayer that is a New Jersey S corporation:

19 (i) for privilege periods ending on or before June 30, 1998 the  
20 rate determined by subtracting the maximum tax bracket rate  
21 provided under N.J.S.54A:2-1 for the privilege period from the tax  
22 rate that would otherwise be applicable to the taxpayer's entire net  
23 income for the privilege period if the taxpayer were not an S  
24 corporation provided under paragraph (1) of this subsection for the  
25 privilege period; and

26 (ii) For a taxpayer that has entire net income in excess of  
27 \$100,000 for the privilege period, for privilege periods ending on or  
28 after July 1, 1998, but on or before June 30, 2001, the rate shall be  
29 2%,

30 for privilege periods ending on or after July 1, 2001, but on or  
31 before June 30, 2006, the rate shall be 1.33%,

32 for privilege periods ending on or after July 1, 2006, but on or  
33 before June 30, 2007, the rate shall be 0.67%, and

34 for privilege periods ending on or after July 1, 2007 there shall  
35 be no rate of tax imposed under this paragraph; and

36 (iii) For a taxpayer that has entire net income of \$100,000 or less  
37 for privilege periods ending on or after July 1, 1998, but on or  
38 before June 30, 2001 the rate for that privilege period shall be 0.5%,  
39 and for privilege periods ending on or after July 1, 2001 there shall  
40 be no rate of tax imposed under this paragraph.

41 (iv) The taxpayer's rate determined under subparagraph (i), (ii)  
42 or (iii) of this paragraph shall be multiplied by its entire net income  
43 that is not subject to federal income taxation or such portion thereof  
44 as may be allocable to this State pursuant to sections 6 through 10  
45 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such  
46 portion thereof as is specifically assigned to this State as provided  
47 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

1 (3) For a taxpayer that is a New Jersey S corporation, in  
 2 addition to the amount, if any, determined under paragraph (2) of  
 3 this subsection, the tax rate that would otherwise be applicable to  
 4 the taxpayer's entire net income for the privilege period if the  
 5 taxpayer were not an S corporation provided under paragraph (1) of  
 6 this subsection for the privilege period multiplied by its entire net  
 7 income that is subject to federal income taxation or such portion  
 8 thereof as may be allocable to this State pursuant to sections 6  
 9 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

10 (d) Provided, however, that the franchise tax to be annually  
 11 assessed to and paid by any investment company or real estate  
 12 investment trust, which has elected to report as such and has filed  
 13 its return in the form and within the time provided in this act and  
 14 the rules and regulations promulgated in connection therewith,  
 15 shall, in the case of an investment company, be measured by 40% of  
 16 its entire net income and 40% of its entire net worth, and in the case  
 17 of a real estate investment trust, by 4% of its entire net income and  
 18 15% of its entire net worth, at the rates hereinbefore set forth for the  
 19 computation of tax on net income and net worth, respectively, but in  
 20 no case less than \$250, and further provided, however, that the  
 21 franchise tax to be annually assessed to and paid by a regulated  
 22 investment company which for a period covered by its report  
 23 satisfies the requirements of Chapter 1, Subchapter M, Part I,  
 24 Section 852(a) of the federal Internal Revenue Code shall be \$250.

25 (e) The tax assessed to any taxpayer pursuant to this section  
 26 shall not be less than \$25 in the case of a domestic corporation, \$50  
 27 in the case of a foreign corporation, or \$250 in the case of an  
 28 investment company or regulated investment company. Provided  
 29 however, that for privilege periods beginning in calendar year 1994  
 30 and thereafter the minimum taxes for taxpayers other than an  
 31 investment company or a regulated investment company shall be as  
 32 provided in the following schedule:

33 Period Beginning	Domestic	Foreign
34 In Calendar Year	Corporation	Corporation
	Minimum Tax	Minimum Tax
36 1994	\$ 50	\$100
37 1995	\$100	\$200
38 1996	\$150	\$200
39 1997	\$200	\$200
40 1998	\$200	\$200
41 1999	\$200	\$200
42 2000	\$200	\$200
43 2001	\$210	\$210

44 and for calendar years 2002 through 2005 the minimum tax for all  
 45 taxpayers shall be \$500, and for calendar year 2006 [and  
 46 thereafter] through calendar year 2011 the minimum tax for all  
 47 corporations, and for privilege periods beginning in calendar year  
 48 2012 and thereafter the minimum tax for corporations that are not

1 New Jersey S corporations shall be based on the New Jersey gross  
 2 receipts, as defined for the purposes of this section pursuant to  
 3 section 7 of P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant  
 4 to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
5 Less than \$100,000	.....\$500
6 \$100,000 or more but	
7 less than \$250,000	..... \$750
8 \$250,000 or more but	
9 less than \$500,000	..... \$1,000
10 \$500,000 or more but	
11 less than \$1,000,000	..... \$1,500
12 \$1,000,000 or more	..... \$2,000

14 and for privilege periods beginning in calendar year 2012 and  
 15 thereafter the minimum tax for corporations that are New Jersey S  
 16 corporations shall be based on the New Jersey gross receipts, as  
 17 defined for the purposes of this section pursuant to section 7 of  
 18 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the  
 19 following schedule:

<u>New Jersey Gross Receipts:</u>	<u>Minimum Tax:</u>
20 <u>Less than \$100,000</u>	<u>.....\$375</u>
21 <u>\$100,000 or more but</u>	
22 <u>less than \$250,000</u>	<u>..... \$562.50</u>
23 <u>\$250,000 or more but</u>	
24 <u>less than \$500,000</u>	<u>..... \$750</u>
25 <u>\$500,000 or more but</u>	
26 <u>less than \$1,000,000</u>	<u>..... \$1,125</u>
27 <u>\$1,000,000 or more</u>	<u>..... \$1,500</u>

29 provided however, that for a taxpayer that is a member of an  
 30 affiliated group or a controlled group pursuant to section 1504 or  
 31 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
 32 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or  
 33 more for the privilege period, the minimum tax shall be \$2,000 for  
 34 the privilege period.

35 (f) In lieu of the portion of the tax based on net worth and to be  
 36 computed under subsection (a) of this section, any taxpayer, the  
 37 value of whose total assets everywhere, less reasonable reserves for  
 38 depreciation, as of the close of the period covered by its report,  
 39 amounts to less than \$150,000, may elect to pay the tax shown in a  
 40 table which shall be promulgated by the director.

41 (g) Provided however, that for privilege periods beginning on or  
 42 after January 1, 2001 but before January 1, 2002 the franchise tax  
 43 annually assessed to and paid by a taxpayer:

44 (1) that is a limited liability company or foreign limited liability  
 45 company classified as a partnership for federal income tax purposes  
 46 shall be the amount determined pursuant to the provisions of section  
 47 3 of P.L.2001, c.136 (C.54:10A-15.6); or

1 (2) that is a limited partnership or foreign limited partnership  
2 classified as a partnership for federal income tax purposes shall be  
3 the amount determined pursuant to the provisions of section 4 of  
4 P.L.2001, c.136 (C.54:10A-15.7).

5 (h) Provided however, that for privilege periods beginning on or  
6 after January 1, 2002 the franchise tax annually assessed to and paid  
7 by a taxpayer that is a partnership shall be the amount determined  
8 pursuant to the provisions of section 12 of P.L.2002, c.40  
9 (C.54:10A-15.11).

10 (i) (Deleted by amendment, P.L.2008, c.120)  
11 (cf: P.L.2008, c.120, s.1)

12

13 2. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill decreases the minimum corporation business tax on  
19 New Jersey subchapter S corporations. New Jersey subchapter S  
20 corporations are corporations, regardless of where they are  
21 organized or headquartered, that have made the federal subchapter S  
22 election to be exempt from taxation on their regular income and  
23 have made the New Jersey election to be exempt from corporation  
24 business tax on their regular income.

25 Currently, all corporations subject to corporation business tax,  
26 including New Jersey subchapter S corporations, are subject to  
27 minimum tax based on the New Jersey gross receipts of the  
28 taxpayer corporation as follows:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$500
\$100,000 or more but less than \$250,000	\$750
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000	\$1,500
\$1,000,000 or more	\$2,000

38 The minimum tax of corporations that are members of affiliated  
39 or controlled groups with total payrolls of \$5 million or more is  
40 \$2,000 annually.

41 This bill provides a 25% cut in the minimum tax payable by a  
42 New Jersey subchapter S corporation, for taxable periods beginning  
43 on or after January 1, 2012, as follows:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$375
\$100,000 or more but less than \$250,000	\$562.50
\$250,000 or more but	

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**S2981 GREENSTEIN, SARLO**

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1	less than \$500,000	\$750
2	\$500,000 or more but	
3	less than \$1,000,000	\$1,125
4	\$1,000,000 or more	\$1,500

5 The minimum tax of New Jersey subchapter S corporations that  
6 are members of affiliated or controlled groups with total payrolls of  
7 \$5 million or more will remain \$2,000 annually under the bill.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 2981

# STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2981.

This bill decreases by 25% the minimum New Jersey corporation business tax on New Jersey subchapter S corporations. New Jersey subchapter S corporations are corporations, regardless of where they are organized or headquartered, that have made the federal subchapter S election to be exempt from federal taxation on their regular income and have made the New Jersey election to be exempt from corporation business tax on their regular income.

Currently, all corporations subject to corporation business tax, including New Jersey subchapter S corporations, are subject to minimum tax based on the New Jersey gross receipts of the taxpayer corporation as follows:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$500
\$100,000 or more but less than \$250,000	\$750
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000	\$1,500
\$1,000,000 or more	\$2,000

The minimum tax of corporations that are members of affiliated or controlled groups with total payrolls of \$5 million or more is \$2,000 annually.

The bill provides a 25% cut in the minimum tax payable by a New Jersey subchapter S corporation, other than a corporation that is a member of an affiliated or controlled group with total payroll of \$5 million or more, for taxable periods beginning on or after January 1, 2012, as follows:



New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$375
\$100,000 or more but less than \$250,000	\$562.50
\$250,000 or more but less than \$500,000	\$750
\$500,000 or more but less than \$1,000,000	\$1,125
\$1,000,000 or more	\$1,500

FISCAL IMPACT:

The Budget Summary for the Governor's FY 2012 Budget recommended an initiative that is reflected in this bill. The Budget Summary estimated that the bill would result in a corporation business tax revenue reduction of \$13 million for State FY 2012, \$23 million for FY2013 and \$23 million for FY 2014 based on 2007 data.

The Office of Legislative Services (OLS) used more recent data to estimate that the corporation business tax revenue reduction under this bill will be \$27 million for State FY 2012. This increased revenue loss seems to be the result of a trend in business organization choices and the OLS cautions that if this trend continues the revenue loss under the bill may also grow. The OLS notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

**FISCAL NOTE**  
**SENATE, No. 2981**  
**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

DATED: JULY 6, 2011

**SUMMARY**

- Synopsis:** Decreases the minimum corporation business tax on certain New Jersey subchapter S corporations by 25 percent.
- Type of Impact:** Reduces revenue from the corporation business tax, impacting the General Fund and the 4 percent Constitutional dedication for environmental programs.
- Agencies Affected:** Department of the Treasury. Department of Environmental Protection.

**Executive Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost</b>	\$13,000,000	\$23,000,000	\$23,000,000

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost</b>	\$27,000,000	\$27,000,000	\$27,000,000

- The Executive Branch estimates that the bill would result in a corporation business tax revenue reduction of \$13 million for State FY 2012, \$23 million for FY2013 and \$23 million for FY 2014 based on 2007 data.
- The Office of Legislative Services (OLS) **concurs** with the general methodology used by the Executive, but using more recent data estimates a corporation business tax revenue reduction of \$27 million for State FY 2012, cautioning that this revenue impact may be expected to grow in future years based on trends in business organization choices. The OLS notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

**BILL DESCRIPTION**

Senate Bill No. 2981 of 2011 decreases the minimum corporation business tax on New Jersey subchapter S corporations. New Jersey subchapter S corporations are corporations,

regardless of where they are organized or headquartered, that have made the federal subchapter S election to be exempt from taxation on their regular income and have made the New Jersey election to be exempt from corporation business tax on their regular income.

Currently, all corporations subject to corporation business tax, including New Jersey subchapter S corporations, are subject to minimum tax based on the New Jersey gross receipts of the taxpayer corporation as follows:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$500
\$100,000 or more but less than \$250,000	\$750
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000	\$1,500
\$1,000,000 or more	\$2,000

The minimum tax of corporations that are members of affiliated or controlled groups with total payrolls of \$5 million or more is \$2,000 annually.

The bill provides a 25 percent cut in the minimum tax payable by a New Jersey subchapter S corporation, other than a corporation that is a member of an affiliated or controlled group with total payroll of \$5 million or more, for taxable periods beginning on or after January 1, 2012.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Budget Summary for the Governor's FY 2012 Budget estimates for a recommended initiative to reduce the minimum tax on subchapter S corporations, a \$13 million corporation business tax revenue reduction for State FY 2012, \$23 million for FY2013 and \$23 million for FY 2014 based on 2007 data.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS believes the Executive estimates of annual revenue losses under this bill to be generally consistent with data available to it at the time of the estimate. With the advantage of more recent preliminary 2009 data made available to it through the budget process, the OLS estimates that the revenue reduction pursuant to this bill for FY 2012 will be \$27 million. The OLS believes that this is not due to more previously existing corporations becoming subject to minimum tax, but of a trend (noted by the State Treasurer in testimony before the Assembly Budget Committee) of newly created business to organize in non-traditional forms. This would seem to reflect an 8.5 percent increases from 2007 to 2009, and an increase in minimum corporation business taxpayers estimated to be about 45 percent over the last decade. The OLS notes that this continuing trend suggests an increasing fiscal impact of the changes made by this bill in future years.

The Executive estimation methodology as to the first year of operation of the bill, suggesting that the bill would have about 44 percent of the effect as in later years, is unclear. This result could be expected if, for example, 44 percent of all S corporations were known to have non-calendar tax accounting and payment years, but no such information is available to the OLS.

The OLS also notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

*Section: Revenue, Finance and Appropriations*  
*Analyst: Philip Liloia*  
*Lead Counsel*  
*Approved: David J. Rosen*  
*Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY, No. 4206

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 27, 2011

**Sponsored by:**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Salem, Cumberland and Gloucester)**

**Co-Sponsored by:**

**Assemblymen Chivukula, Wisniewski, Fuentes, Milam, Benson,  
Assemblywomen Pou and Evans**

**SYNOPSIS**

Decreases the minimum corporation business tax on certain New Jersey subchapter S corporations by 25%.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/30/2011)**

1 AN ACT decreasing the minimum corporation business tax on  
 2 certain New Jersey subchapter S corporations, amending  
 3 P.L.1945, c.162.

4  
 5 **BE IT ENACTED** by the Senate and General Assembly of the State  
 6 of New Jersey:

7  
 8 1. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to  
 9 read as follows:

10 5. The franchise tax to be annually assessed to and paid by  
 11 each taxpayer shall be the greater of the amount computed pursuant  
 12 to this section or the alternative minimum assessment computed  
 13 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided  
 14 however, that in the case of a taxpayer that is a New Jersey S  
 15 corporation, an investment company, a professional corporation  
 16 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a  
 17 similar corporation for profit organized for the purpose of rendering  
 18 professional services under the laws of another state, or a person  
 19 operating on a cooperative basis under Part I of Subchapter T of the  
 20 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,  
 21 there shall be no alternative minimum assessment computed  
 22 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

23 The amount computed pursuant to this section shall be the sum  
 24 of the amount computed under subsection (a) hereof, or in the  
 25 alternative to the amount computed under subsection (a) hereof, the  
 26 amount computed under subsection (f) hereof, and the amount  
 27 computed under subsection (c) hereof:

28 (a) That portion of its entire net worth as may be allocable to  
 29 this State as provided in section 6, multiplied by the following  
 30 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated  
 31 net worth; 4/10 of a mill per dollar on the second \$100,000,000.00;  
 32 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a  
 33 mill per dollar on all amounts of allocated net worth in excess of  
 34 \$300,000,000.00; provided, however, that with respect to reports  
 35 covering accounting or privilege periods set forth below, the rate  
 36 shall be that percentage of the rate set forth in this subsection for  
 37 the appropriate year:

Accounting or Privilege Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

45 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3  
2 1/4% of its entire net income or such portion thereof as may be  
3 allocable to this State as provided in section 6 of P.L.1945, c.162  
4 (C.54:10A-6) plus such portion thereof as is specifically assigned to  
5 this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-  
6 6.1); provided, however, that with respect to reports covering  
7 accounting or privilege periods or parts thereof ending after  
8 December 31, 1967, the rate shall be 4 1/4%; and that with respect  
9 to reports covering accounting or privilege periods or parts thereof  
10 ending after December 31, 1971, the rate shall be 5 1/2%; and that  
11 with respect to reports covering accounting or privilege periods or  
12 parts thereof ending after December 31, 1974, the rate shall be 7  
13 1/2%; and that with respect to reports covering privilege periods or  
14 parts thereof ending after December 31, 1979, the rate shall be 9%;  
15 provided however, that for a taxpayer that has entire net income of  
16 \$100,000 or less for a privilege period and is not a partnership the  
17 rate for that privilege period shall be 7 1/2% and provided further  
18 that for a taxpayer that has entire net income of \$50,000 or less for  
19 a privilege period and is not a partnership the rate for that privilege  
20 period shall be 6 1/2%.

21 (2) For a taxpayer that is a New Jersey S corporation:

22 (i) for privilege periods ending on or before June 30, 1998 the  
23 rate determined by subtracting the maximum tax bracket rate  
24 provided under N.J.S.54A:2-1 for the privilege period from the tax  
25 rate that would otherwise be applicable to the taxpayer's entire net  
26 income for the privilege period if the taxpayer were not an S  
27 corporation provided under paragraph (1) of this subsection for the  
28 privilege period; and

29 (ii) For a taxpayer that has entire net income in excess of  
30 \$100,000 for the privilege period, for privilege periods ending on or  
31 after July 1, 1998, but on or before June 30, 2001, the rate shall be  
32 2%,

33 for privilege periods ending on or after July 1, 2001, but on or  
34 before June 30, 2006, the rate shall be 1.33%,

35 for privilege periods ending on or after July 1, 2006, but on or  
36 before June 30, 2007, the rate shall be 0.67%, and

37 for privilege periods ending on or after July 1, 2007 there shall  
38 be no rate of tax imposed under this paragraph; and

39 (iii) For a taxpayer that has entire net income of \$100,000 or less  
40 for privilege periods ending on or after July 1, 1998, but on or  
41 before June 30, 2001 the rate for that privilege period shall be 0.5%,  
42 and for privilege periods ending on or after July 1, 2001 there shall  
43 be no rate of tax imposed under this paragraph.

44 (iv) The taxpayer's rate determined under subparagraph (i), (ii)  
45 or (iii) of this paragraph shall be multiplied by its entire net income  
46 that is not subject to federal income taxation or such portion thereof  
47 as may be allocable to this State pursuant to sections 6 through 10  
48 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such

1 portion thereof as is specifically assigned to this State as provided  
 2 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

3 (3) For a taxpayer that is a New Jersey S corporation, in  
 4 addition to the amount, if any, determined under paragraph (2) of  
 5 this subsection, the tax rate that would otherwise be applicable to  
 6 the taxpayer's entire net income for the privilege period if the  
 7 taxpayer were not an S corporation provided under paragraph (1) of  
 8 this subsection for the privilege period multiplied by its entire net  
 9 income that is subject to federal income taxation or such portion  
 10 thereof as may be allocable to this State pursuant to sections 6  
 11 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

12 (d) Provided, however, that the franchise tax to be annually  
 13 assessed to and paid by any investment company or real estate  
 14 investment trust, which has elected to report as such and has filed  
 15 its return in the form and within the time provided in this act and  
 16 the rules and regulations promulgated in connection therewith,  
 17 shall, in the case of an investment company, be measured by 40% of  
 18 its entire net income and 40% of its entire net worth, and in the case  
 19 of a real estate investment trust, by 4% of its entire net income and  
 20 15% of its entire net worth, at the rates hereinbefore set forth for the  
 21 computation of tax on net income and net worth, respectively, but in  
 22 no case less than \$250, and further provided, however, that the  
 23 franchise tax to be annually assessed to and paid by a regulated  
 24 investment company which for a period covered by its report  
 25 satisfies the requirements of Chapter 1, Subchapter M, Part I,  
 26 Section 852(a) of the federal Internal Revenue Code shall be \$250.

27 (e) The tax assessed to any taxpayer pursuant to this section  
 28 shall not be less than \$25 in the case of a domestic corporation, \$50  
 29 in the case of a foreign corporation, or \$250 in the case of an  
 30 investment company or regulated investment company. Provided  
 31 however, that for privilege periods beginning in calendar year 1994  
 32 and thereafter the minimum taxes for taxpayers other than an  
 33 investment company or a regulated investment company shall be as  
 34 provided in the following schedule:

35	Period Beginning	Domestic	Foreign
36	In Calendar Year	Corporation	Corporation
37		Minimum Tax	Minimum Tax
38	1994	\$ 50	\$100
39	1995	\$100	\$200
40	1996	\$150	\$200
41	1997	\$200	\$200
42	1998	\$200	\$200
43	1999	\$200	\$200
44	2000	\$200	\$200
45	2001	\$210	\$210

46 and for calendar years 2002 through 2005 the minimum tax for all  
 47 taxpayers shall be \$500, and for calendar year 2006 [and  
 48 thereafter] through calendar year 2011 the minimum tax for all



1 corporations, and for privilege periods beginning in calendar year  
 2 2012 and thereafter the minimum tax for corporations that are not  
 3 New Jersey S corporations shall be based on the New Jersey gross  
 4 receipts, as defined for the purposes of this section pursuant to  
 5 section 7 of P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant  
 6 to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
8           Less than \$100,000	.....\$500
9           \$100,000 or more but	
10               less than \$250,000	..... \$750
11           \$250,000 or more but	
12               less than \$500,000	..... \$1,000
13           \$500,000 or more but	
14               less than \$1,000,000	..... \$1,500
15           \$1,000,000 or more	..... \$2,000

16 and for privilege periods beginning in calendar year 2012 and  
 17 thereafter the minimum tax for corporations that are New Jersey S  
 18 corporations shall be based on the New Jersey gross receipts, as  
 19 defined for the purposes of this section pursuant to section 7 of  
 20 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the  
 21 following schedule:

<u>New Jersey Gross Receipts:</u>	<u>Minimum Tax:</u>
23 <u>Less than \$100,000</u>	<u>.....\$375</u>
24 <u>\$100,000 or more but</u>	
25 <u>less than \$250,000</u>	<u>..... \$562.50</u>
26 <u>\$250,000 or more but</u>	
27 <u>less than \$500,000</u>	<u>..... \$750</u>
28 <u>\$500,000 or more but</u>	
29 <u>less than \$1,000,000</u>	<u>..... \$1,125</u>
30 <u>\$1,000,000 or more</u>	<u>..... \$1,500</u>

31 provided however, that for a taxpayer that is a member of an  
 32 affiliated group or a controlled group pursuant to section 1504 or  
 33 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
 34 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or  
 35 more for the privilege period, the minimum tax shall be \$2,000 for  
 36 the privilege period.

37 (f) In lieu of the portion of the tax based on net worth and to be  
 38 computed under subsection (a) of this section, any taxpayer, the  
 39 value of whose total assets everywhere, less reasonable reserves for  
 40 depreciation, as of the close of the period covered by its report,  
 41 amounts to less than \$150,000, may elect to pay the tax shown in a  
 42 table which shall be promulgated by the director.

43 (g) Provided however, that for privilege periods beginning on or  
 44 after January 1, 2001 but before January 1, 2002 the franchise tax  
 45 annually assessed to and paid by a taxpayer:

46 (1) that is a limited liability company or foreign limited liability  
 47 company classified as a partnership for federal income tax purposes

1 shall be the amount determined pursuant to the provisions of section  
 2 3 of P.L.2001, c.136 (C.54:10A-15.6); or  
 3 (2) that is a limited partnership or foreign limited partnership  
 4 classified as a partnership for federal income tax purposes shall be  
 5 the amount determined pursuant to the provisions of section 4 of  
 6 P.L.2001, c.136 (C.54:10A-15.7).  
 7 (h) Provided however, that for privilege periods beginning on or  
 8 after January 1, 2002 the franchise tax annually assessed to and paid  
 9 by a taxpayer that is a partnership shall be the amount determined  
 10 pursuant to the provisions of section 12 of P.L.2002, c.40  
 11 (C.54:10A-15.11).  
 12 (i) (Deleted by amendment, P.L.2008, c.120)  
 13 (cf: P.L.2008, c.120, s.1)

14  
 15 2. This act shall take effect immediately.  
 16  
 17

18 STATEMENT  
 19

20 This bill decreases the minimum corporation business tax on  
 21 New Jersey subchapter S corporations. New Jersey subchapter S  
 22 corporations are corporations, regardless of where they are  
 23 organized or headquartered, that have made the federal subchapter S  
 24 election to be exempt from taxation on their regular income and  
 25 have made the New Jersey election to be exempt from corporation  
 26 business tax on their regular income.

27 Currently, all corporations subject to corporation business tax,  
 28 including New Jersey subchapter S corporations, are subject to  
 29 minimum tax based on the New Jersey gross receipts of the  
 30 taxpayer corporation as follows:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$500
\$100,000 or more but less than \$250,000	\$750
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000	\$1,500
\$1,000,000 or more	\$2,000

40 The minimum tax of corporations that are members of affiliated  
 41 or controlled groups with total payrolls of \$5 million or more is  
 42 \$2,000 annually.

43 This bill provides a 25% cut in the minimum tax payable by a  
 44 New Jersey subchapter S corporation, for taxable periods beginning  
 45 on or after January 1, 2012, as follows:

**A4206 COUTINHO, COUGHLIN**

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	New Jersey Gross Receipts:	Minimum Tax:
1		
2	Less than \$100,000	\$375
3	\$100,000 or more but	
4	less than \$250,000	\$562.50
5	\$250,000 or more but	
6	less than \$500,000	\$750
7	\$500,000 or more but	
8	less than \$1,000,000	\$1,125
9	\$1,000,000 or more	\$1,500
10	The minimum tax of New Jersey subchapter S corporations that	
11	are members of affiliated or controlled groups with total payrolls of	
12	\$5 million or more will remain \$2,000 annually under the bill.	

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 4206

# STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Assembly Budget Committee reports favorably Assembly Bill No. 4206.

This bill decreases by 25% the minimum New Jersey corporation business tax on New Jersey subchapter S corporations. New Jersey subchapter S corporations are corporations, regardless of where they are organized or headquartered, that have made the federal subchapter S election to be exempt from federal taxation on their regular income and have made the New Jersey election to be exempt from corporation business tax on their regular income.

Currently, all corporations subject to corporation business tax, including New Jersey subchapter S corporations, are subject to minimum tax based on the New Jersey gross receipts of the taxpayer corporation as follows:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$500
\$100,000 or more but less than \$250,000	\$750
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000	\$1,500
\$1,000,000 or more	\$2,000

The minimum tax of corporations that are members of affiliated or controlled groups with total payrolls of \$5 million or more is \$2,000 annually.

The bill provides a 25% cut in the minimum tax payable by a New Jersey subchapter S corporation, other than a corporation that is a member of an affiliated or controlled group with total payroll of \$5 million or more, for taxable periods beginning on or after January 1, 2012, as follows:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$375
\$100,000 or more but less than \$250,000	\$562.50
\$250,000 or more but less than \$500,000	\$750
\$500,000 or more but less than \$1,000,000	\$1,125
\$1,000,000 or more	\$1,500

FISCAL IMPACT:

The Budget Summary for the Governor's FY 2012 Budget recommended an initiative that is reflected in this bill. The Budget Summary estimated that the bill would result in a corporation business tax revenue reduction of \$13 million for State FY 2012, \$23 million for FY2013 and \$23 million for FY 2014 based on 2007 data.

The Office of Legislative Services (OLS) used more recent data to estimate that the corporation business tax revenue reduction under this bill will be \$27 million for State FY 2012. This increased revenue loss seems to be the result of a trend in business organization choices and the OLS cautions that if this trend continues the revenue loss under the bill may also grow. The OLS notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

**FISCAL NOTE**  
**ASSEMBLY, No. 4206**  
**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

DATED: JULY 6, 2011

**SUMMARY**

- Synopsis:** Decreases the minimum corporation business tax on certain New Jersey subchapter S corporations by 25 percent.
- Type of Impact:** Reduces revenue from the corporation business tax, impacting the General Fund and the 4 percent Constitutional dedication for environmental programs.
- Agencies Affected:** Department of the Treasury. Department of Environmental Protection.

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	\$13,000,000	\$23,000,000	\$23,000,000

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	\$27,000,000	\$27,000,000	\$27,000,000

- The Executive Branch estimates that the bill would result in a corporation business tax revenue reduction of \$13 million for State FY 2012, \$23 million for FY2013 and \$23 million for FY 2014 based on 2007 data.
- The Office of Legislative Services (OLS) **concurs** with the general methodology used by the Executive, but using more recent data estimates a corporation business tax revenue reduction of \$27 million for State FY 2012, cautioning that this revenue impact may be expected to grow in future years based on trends in business organization choices. The OLS notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

**BILL DESCRIPTION**

Assembly Bill No. 4206 of 2011 decreases the minimum corporation business tax on New Jersey subchapter S corporations. New Jersey subchapter S corporations are corporations,

regardless of where they are organized or headquartered, that have made the federal subchapter S election to be exempt from taxation on their regular income and have made the New Jersey election to be exempt from corporation business tax on their regular income.

Currently, all corporations subject to corporation business tax, including New Jersey subchapter S corporations, are subject to minimum tax based on the New Jersey gross receipts of the taxpayer corporation as follows:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$500
\$100,000 or more but less than \$250,000	\$750
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000	\$1,500
\$1,000,000 or more	\$2,000

The minimum tax of corporations that are members of affiliated or controlled groups with total payrolls of \$5 million or more is \$2,000 annually.

The bill provides a 25 percent cut in the minimum tax payable by a New Jersey subchapter S corporation, other than a corporation that is a member of an affiliated or controlled group with total payroll of \$5 million or more, for taxable periods beginning on or after January 1, 2012.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The Budget Summary for the Governor's FY 2012 Budget estimates for a recommended initiative to reduce the minimum tax on subchapter S corporations, a \$13 million corporation business tax revenue reduction for State FY 2012, \$23 million for FY2013 and \$23 million for FY 2014 based on 2007 data.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS believes the Executive estimates of annual revenue losses under this bill to be generally consistent with data available to it at the time of the estimate. With the advantage of more recent preliminary 2009 data made available to it through the budget process, the OLS estimates that the revenue reduction pursuant to this bill for FY 2012 will be \$27 million. The OLS believes that this is not due to more previously existing corporations becoming subject to minimum tax, but of a trend (noted by the State Treasurer in testimony before the Assembly Budget Committee) of newly created business to organize in non-traditional forms. This would seem to reflect an 8.5 percent increase from 2007 to 2009, and an increase in minimum corporation business taxpayers estimated to be about 45 percent over the last decade. The OLS notes that this continuing trend suggests an increasing fiscal impact of the changes made by this bill in future years.

The Executive estimation methodology as to the first year of operation of the bill, suggesting that the bill would have about 44 percent of the effect as in later years, is unclear. This result could be expected if, for example, 44 percent of all S corporations were known to have non-calendar tax accounting and payment years, but no such information is available to the OLS.

The OLS also notes that 4 percent of any revenue loss from the corporation business tax under this bill would also impact resources Constitutionally dedicated to certain environmental mitigation programs.

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This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



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## Governor Christie Keeps Commitment to New Jerseyans with Balanced Budget, Increased Education Spending and Job Creating Tax Cuts

Thursday, June 30, 2011 [Tags: Budget and Spending](#)

Trenton, NJ – For the second year in a row, Governor Chris Christie has enacted a constitutionally balanced budget that reduces spending, does not raise taxes and protects critical priorities like education and health care. The revised budget is grounded in reality and is the polar opposite of a reckless Democratic spending plan the Governor was forced to line-item veto by nearly \$1 billion in order to meet the state's constitutional obligation to deliver a balanced budget for the next fiscal year. At the same time, the budget builds on the hard-won progress made over the last year to right New Jersey's fiscal course over the long term, and also protects key priorities and encourages job growth. The Governor maintained his commitment to education by increasing funding by \$850 million over last year's budget. In total, this means every dollar of cuts made last year has been restored and increased by an additional \$30 million.

Additionally, the Governor took action rejecting job-killing tax increases and signed into law additional targeted tax cuts for small business and job creators.

"It is my solemn pact with the residents and taxpayers of New Jersey to never allow a return to the kind of reckless, autopilot spending that devastated our state's economic health in years past and which was embodied in the budget I repaired, a relic of days when there was no concern for the state's fiscal reality," Governor Chris Christie said. "Let me be clear – New Jersey is only going to spend the money we have. We are not going to revert back to business as usual and undo all the progress that has been made to improve New Jersey's long-term fiscal health. The actions I have taken today reinforce a commitment to protecting taxpayer dollars, safeguarding critical priorities like education, and rejecting tax increases that impede economic expansion and job creation.

"This budget is not only constitutionally balanced, but represents my commitment to education. This year's budget managed to increase funding by \$850 million and does so in a fiscally prudent budget. New Jersey continues to spend more money per pupil than any other state and now is the time to complement the dollars spent with real education reform. Now is the time to turn our focus and energy to tackling the next big thing for our state – education reform," concluded Governor Christie.

The Governor's remedies, a combination of the line-item veto on the appropriations bill and the absolute veto, ensure the state will go into the next fiscal year with a constitutionally balanced budget, puts New Jersey on stronger fiscal footing and funds key commitments:

- Governor Christie's adjusted budget spends \$29.7 billion, \$900 million less than the Democratic budget and maintains a healthy and necessary surplus;
- Increases state aid to school districts by \$850 million over last year. This commitment to education includes the Governor's initial \$250 million increase for all school districts, meeting the Supreme Court's mandate by providing an additional \$450 million to the Abbott districts, and an additional \$150 million for non-Abbott districts;
- Doubles the Homestead Benefit to provide property tax relief for New Jersey families;
- Increases and secures funding for New Jersey hospitals by \$20 million;
- Provides full funding for healthcare to low-income earners and the uninsured through Federally Qualified Health Centers;
- Provides \$180 million in targeted tax cuts and incentives to grow the economy and create jobs;
- Fulfills New Jersey's commitment to make the state's pension fund payment;
- Doesn't raise taxes on individuals and job creators at a time when New Jerseyans are already subject to one of the highest state income tax rates in the nation and New York is reducing its tax burden; and
- Preserves critical spending for senior and disabled prescription aid.

In addition to returning a responsible and balanced budget to the Legislature, Governor Christie took other action today to stop job-killing tax increases and create a competitive climate for economic growth. Governor Christie vetoed Assembly Bill 4202, a Democratic proposal that would raise taxes on individuals and businesses at a time when New Jerseyans are already subject to one of the highest state income tax rates in the nation. The proposed income tax hike would directly hurt small business and exacerbate the volatility of New Jersey's revenue base, considering that 71 percent of the taxpayers who pay the top tax rate under this legislation report income from business activity, and nearly 42 percent of the revenue subject to this tax increase represents business income.

\* The Governor signed into law today two additional pro-growth tax cuts that were part of his budget proposal that will

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eliminate the cap on the corporation business tax research credit and decrease the minimum corporation business tax on S-corps by 25 percent. Previously, on April 28, Governor Christie signed two tax cuts that he had initially proposed, the single-sales tax factor and net-loss carry forward. In addition, as initially proposed by Governor Christie, the Transition Energy Facility Assessment will phase out over the next three years, reducing energy costs for New Jersey families and businesses. In total, these pro-growth measures provide \$180 million in targeted tax relief for New Jersey businesses and entrepreneurs.

The Governor also vetoed Assembly bill A-4204 in a fiscally responsible move that allows the State to continue to provide the Earned Income Tax Credit (EITC) at a level that the State's taxpayers can sustain. While a difficult decision, providing the State EITC at 25 percent of the federal EITC is not affordable and not sustainable, which is why the Legislature passed and the Governor signed into law last year legislation to make the State EITC equal to 20 percent of the federal EITC. He also absolutely vetoed the Democrat's supplemental spending bill, A-4203, which was unconstitutional because it provided educational spending outside of the budget appropriations act.

A listing of spending line-items vetoed by the Governor, copies of the Governor's line item veto messages for S-4000 and S-4001, and copies of the Governor's veto messages for A-4202, A-4203 and A-4204 can be found below.

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